

AREA ADVISORY COUNCIL RESOLUTION

San Luis Obispo County has a resolution under which ten Area Advisory Councils have been recognized. This report is about the resolution recognizing the councils and its implementation. These councils, although not official functions of county government, receive both limited financial assistance and staff support from the county.

AUTHORITY

California Penal Code §925 states: “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts.”

ORIGIN

The Board of Supervisors passed a resolution in 1996 formally recognizing area advisory councils as representing community opinion regarding land use and planning issues. Because advisory councils receive both money and assistance from the county, we have chosen to examine the relationship of county government to these councils.

DEFINITIONS

The Resolution – The resolution passed by the Board of Supervisors in 1996 for the purpose of recognizing Area Advisory Councils. (See Appendices A, B & C)

Councils – Area Advisory Councils.

METHOD

In our investigation of The Resolution recognizing advisory councils the Grand Jury:

- ⟨ reviewed The Resolution recognizing advisory councils and the five conditions the councils must meet to attain that recognition,
- ⟨ reviewed the Board of Supervisors discussion notes prior to passage of The Resolution,

- < researched state and county laws and ordinances,
- < reviewed bylaws and election results of several councils,
- < reviewed available advisory council web sites,
- < interviewed members of three advisory councils and other interested parties,
- < interviewed citizens affected by advisory council actions,
- < attended meetings of three advisory councils,
- < conferred with County Counsel regarding the legal aspects of the councils and The Resolution,
- < conferred with the County Administrative Office and County Planning Department regarding the councils and The Resolution,
- < reviewed the advisory council training manual prepared by the Planning Department, and,
- < discussed details of advisory council operation with county planning staff and County Counsel.

The main area of concern in this inquiry: Is there a mechanism to verify councils meet the criteria for recognition under The Resolution?

NARRATIVE

The Grand Jury understands and agrees it is not feasible for individual Supervisors to meet with all interested parties in their districts for each planning issue that comes before the Board of Supervisors or the Planning Commission. Advisory councils are groups of private citizens who wish to provide advice to the county Planning Commission and Board of Supervisors on issues regarding planning, land use, and development projects within a defined geographical area of the county.

On December 10, 1996, the San Luis Obispo County Board of Supervisors passed Resolution Number 96-485 (See Appendix A) entitled, “RESOLUTION ESTABLISHING CRITERIA FOR BOARD RECOGNIZED COMMUNITY ADVISORY COUNCILS.” The purpose of this

resolution was to “set criteria by which the advisory councils could be recognized by the Board of Supervisors as representing the views of the area they purport to represent.”¹ According to County Counsel and County Administration, the Resolution was worded with the intent that councils can be recognized as speaking for their communities but do not become official agencies of county government. The councils were left to decide their own method of operation, by-laws, how their members are selected (or elected), and other issues of interest to the councils.

There are **five criteria** set forth in The Resolution, which these groups must meet to gain recognition:

1. “A community advisory council must be based in and represent a defined community within an established Urban or Village Reserve Line, which can include representatives from outlying or surrounding unincorporated areas associated with the community.”
2. “Community advisory council membership should reflect a broad cross-section of the community.”
3. “Advisory council meetings should occur regularly and be publicly noticed in a timely manner, and open to all members of the public.”
4. “Advisory council bylaws will be established and maintained which direct the organization and protocol of the council. These should include a statement of purpose, rules of order, frequency of meetings and method of appointment of subcommittees, and appointment or election of council members.”
5. “Recommendations made by the advisory council and forwarded to the Board of Supervisors or Planning Commission should be arrived at by majority vote of a quorum of the membership, with as much public input as is feasible.”

These conditions are sound, reasonable, and clear enough to avoid confusion and give guidance to the councils regarding what is expected. **The Resolution does not specify how councils should apply for recognition and contains no mechanism to verify compliance with the criteria.**

¹Definition provided by County Counsel.

There is nothing to prevent multiple councils from applying for recognition in a single area – in which case the question of which one is the true representative of the area must be addressed. As a practical matter, the decision to recognize a council is at the sole discretion of the Supervisor for the district in which the council will operate. Supervisors have the authority to “sponsor” various advisory groups in their districts. As long as The Resolution is in existence, there should be a method of verifying that its criteria are met.

Training

Advisory councils receive training from the county’s Planning Department on issues which may come before the councils. This training currently does not stress the limited role of these councils as “advisory” groups only. Nor is the legal status of the councils made sufficiently clear during the training period or in the training manual furnished to members.

For example, the ***first sentence*** of the training manual currently states, “One of the duties assigned to Community Advisory Councils is the responsibility to review general plan and development projects that are proposed in their community.” This implies that the county has assigned official duties to the councils.

Controversies

Although there are many instances where the council actions receive little attention, recently a kaleidoscope of controversies, confrontations, and disputes has arisen. Incidents have occurred where councils have been dissolved, and disputes have arisen between rival factions as to which one truly represents the community's viewpoint. Some councils have split along factional lines and often appear to be more of an advocacy group than an advisory group. One council has even disregarded its own bylaws.

Because The Resolution does not specify or require a clearly defined geographical area for each council, turf wars have developed. Some councils claim to represent areas where they have been solidly rejected by segments of the public which they claimed to represent.

State laws regulate the processing of permit applications and set time limits for review and action

on permit applications. (See Government Code Sections 65920-65963.1, also known as the “Permit Streamlining Act”.) There have been instances where advisory councils have not acted in a timely manner and applications have been held up awaiting input from a council.

Interest in participation by the public is generally apathetic and council seats often go unfilled for lack of candidates. Supervisors have had mixed results with some of the councils. The councils' claims of representing a broad cross-section of public opinion are not always reflected in their composition and position on many issues.

Public response to the actions of the councils has frequently been outspoken, and even hostile. Much of the controversy surrounding the councils arises because other residents of the community frequently do not share the same views as expressed by the council.

A Common Public Misconception

There is a misconception among the general public that advisory councils have some type of governmental authority over land use issues. This misconception probably evolved from two main factors which are not addressed in The Resolution:

1. The Planning Department lists advisory councils on permit applications as a “check-off” box in the approval process.
2. In some instances councils deliberately try to create the impression that they are governmental agencies and have authority over planning and land use issues in their areas.²

The County's Risk Exposure

County Counsel has recognized that advisory council actions can lead to litigation involving the county. The county is generally obligated to defend advisory council members in litigation arising from their actions, and the county indemnifies members against loss in such litigation.

² The Nipomo Advisory Council stated on their web site that they are a “governing body” -- later changed to “governing council.” They also have taken a web address in the domain of **.ca.gov** which customarily identifies official California government agencies.

The county's obligation to defend advisory council members is set forth in an Office Memorandum, dated November 27, 2000, (See Appendix D) in which County Counsel defined the conditions under which the county, “. . . will defend and indemnify advisory committee members who are subject to claims or litigation as a result of the participation of those members in the activity of the committee as long as they are not acting with fraud, corruption, or malice.” Specific restrictions are placed on the county's obligation to defend council members by language included in the memorandum regarding “personal animosity or bias.” Whether the actions of some councils constitute “fraud, corruption, or malice,” or “personal animosity or bias” is a matter for the courts to determine. Without enforcement of the criteria in The Resolution, it is conceivable The Resolution could work against the county in litigation.

CONCLUSION

It is clear that the concept of advisory councils, when properly implemented, can be a valuable aid to Supervisors and planners, and can produce credible results which lead to better government and improved communities. The product of the councils' endeavors should be representative of a broad cross section of community opinion. Advice received from councils, which do not meet the criteria of The Resolution, can increase the county's liability exposure.

FINDINGS

Finding 1: There is no method or mechanism for verifying whether applicants for council status, or existing councils, meet the recognition criteria set forth in The Resolution.

Finding 2: Multiple groups can lay claim to advisory council status in the same area.

Finding 3: Advisory councils are listed as a “check-list item” on applications for county building permits.

Finding 4: Advisory councils receive training from the Planning Department.

Finding 5: County Counsel is obligated to defend legal actions against advisory councils and the county must indemnify councils against losses in litigation.

Finding 6: Certain discretionary permit applications must be acted upon within time constraints

defined by state law.

RECOMMENDATIONS

These recommendations assume the current resolution (Resolution Number 96-405) will remain in effect.

Recommendation 1: The Board of Supervisors should assume responsibility for assuring the conditions of The Resolution for recognition are met. The Resolution should be amended to establish a procedure for determining if groups applying for or claiming advisory council status meet the requirements of The Resolution. (Finding 1)

Recommendation 2: The Board of Supervisors needs to implement a method of resolving conflicts which arise from applications for recognition by competing councils in the same area. (Finding 2)

Recommendation 3: All check-off items and other references to advisory councils should be removed from all county permit application forms. A side-letter should be made available to all permit applicants informing them of the advisory councils purpose, legal status, and role (or lack thereof) in the approval process. (Finding 3)

Recommendation 4: The Planning Department should reassess training of advisory council members and the manual used for this purpose to assure they include an extensive section explaining the purpose, reason for existence, role in the approval process, and legal status of the councils. It should clearly explain their role is strictly confined to soliciting community input for the purpose of giving advice during the approval process.

The first sentence (and any subsequent sections) of the training manual for council members should be revised to eliminate any implication that official duties are assigned to the councils. (Finding 4)

Recommendation 5: Training should make clear that members are responsible for their individual actions on the council as well as the collective actions of the council. They should be apprised of the fact that there is a potential for legal liability for their actions. This portion of the training should be conducted by County Counsel. (Findings 4 & 5)

Recommendation 6: County Counsel should provide council members with an explanation clearly defining the conditions under which the county will, or will not, provide legal defense

and indemnification to the councils and their members. (Finding 5)

Recommendation 1: Advisory councils should respond to issues within the same time frame as is required of the Planning Department if their advice is to be considered. (Finding 6)

REQUIRED RESPONSES

- **The County Department of Planning and Building, Due 7/21/06 (Findings 3, 4, & 6 and Recommendations 3, 4, 5, & 7)**
- **County Counsel, Due 7/21/06 (Findings 5 & 6 and Recommendations 5, 6, & 7)**
- **The San Luis Obispo County Board of Supervisors, Due 8/23/06 (All Findings and Recommendations)**

Appendix A

Discussion of a Resolution Establishing Criteria for Board-Recognized Advisory Councils

BOARD OF SUPERVISORS

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93408 • 805-781-5450



LAURENCE L. LAURENT
DISTRICT TWO

TO: BOARD OF SUPERVISORS
FROM: LAURENCE L. LAURENT, CHAIRMAN, BOARD OF SUPERVISORS
DATE: DECEMBER 10, 1996
SUBJECT: DISCUSSION OF A RESOLUTION ESTABLISHING CRITERIA FOR BOARD-RECOGNIZED ADVISORY COUNCILS

SUMMARY

The Board of Supervisors, as well as the Planning Commission and County staff, values the perspective and recommendations of community advisory councils. To assure that these advising bodies truly represent the communities for which they speak, and to assist in the formation of future advisory councils, a set of guidelines establishing a minimum criteria is needed.

RECOMMENDATION

It is recommended that the Board of Supervisors adopt the attached Resolution Establishing Criteria for Board-Recognized Advisory Councils

DISCUSSION

The Board of Supervisors relies on credible information and local input when making decisions that affect communities. Advisory councils assist in this purpose. While any group of citizens has the right to organize, meet, address the Board and express their opinions, the findings and recommendations of elected or appointed advisory councils should carry more weight. The attached criteria have been established in order to distinguish between duly elected or appointed councils and more loosely formed, self-appointed ones.

OTHER AGENCY INVOLVEMENT

County Administrative staff assisted with the language and concepts expressed in the guidelines. The Board of Supervisors, Planning Commissioners and County staff are all requested to circulate the adopted criteria to existing advisory councils and those which may form in the future.

FINANCIAL CONSIDERATIONS

None.

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Appendix B

Board of Supervisors Resolution No. 96-485

Resolution Establishing Criteria for Board-Recognized Community Advisory Councils

2-10-96

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IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

---Tues--- day ---December 10---, 19 96

PRESENT: Supervisors Harry L. Ovitt, Evelyn Delany, Ruth E. Brackett, David Blakely, and
Chairperson Laurence L. Laurent

ABSENT: None

RESOLUTION NO. 96-485

**RESOLUTION ESTABLISHING CRITERIA FOR
BOARD-RECOGNIZED COMMUNITY ADVISORY COUNCILS**

The following resolution is hereby offered and read:

WHEREAS, the Board of Supervisors values the input of community advisory councils;
and

WHEREAS, the Board of Supervisors wants to make sure that advising bodies
addressing the Board of Supervisors on current and future planning matters in the
unincorporated areas actually represent the communities for which they speak; and

WHEREAS, the Board of Supervisors wishes to establish a consistent set of guidelines
to assist in the formation of future community advisory councils.

NOW, THEREFORE BE IT RESOLVED, that in order for a community advisory
council to be recognized by the San Luis Obispo County Board of Supervisors as being a
representative body, it must meet the following criteria:

1. A community advisory council must be based in and represent a defined community within an established Urban or Village Reserve Line, which can include representatives from outlying or surrounding unincorporated areas associated with the community.
2. Community advisory council membership should reflect a broad cross-section of the community.
3. Advisory council meetings should occur regularly and be publicly noticed in a timely manner, and open to all members of the public.
4. Advisory council bylaws will be established and maintained which direct the organization and protocol of the council. These should include a statement of purpose, rules of order, frequency of meetings and method of appointment of subcommittees, and appointment or election of council members.
5. Recommendations made by the advisory council and forwarded to the Board of Supervisors or Planning Commission should be arrived at by a majority vote of a quorum of the membership, with as much public input as is feasible.

Upon motion of Supervisor Delany, seconded by
Supervisor Blakely, and on the following roll call vote, to wit:

AYES: Supervisors Delany, Blakely, Chairperson Laurent

NOES: Supervisors Ovitt, Brackett

ABSENT: None

The foregoing resolution is hereby adopted.

Laurence F. Laurent
Chairman, Board of Supervisors

ATTEST:

JULIE L. RODEWALD

Clerk of the Board of Supervisors

BY: Cheri Casper Deputy Clerk

APPROVED AS TO FORM
AND LEGAL EFFECT

JAMES B. LINDHOLM, JR.
COUNTY COUNSEL
SAN LUIS OBISPO COUNTY

By J. C. G.
Deputy County Counsel

Date 12/2/96

STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO } ss

I, JULIE L. RODEWALD, County Clerk of the above
named County, do hereby certify that the Board of
Supervisors of said County, on the 20th day of
December, 1996, did pass and adopt the foregoing
resolution, and the same was entered in the
minutes of said Board of Supervisors, and now remain-
ing of record on my office.

Witness, my hand and seal of said Board of Super-
visors this 20 day of Dec

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JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk
of the Board of Supervisors

By Cheri Casper
Deputy Clerk

Appendix C

Public Comments In the Matter of Resolution 96-485

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tuesday, December 10, 1996

PRESENT: Supervisors Harry L. Ovitt, Evelyn Delany, Ruth Brackett,
David Blakely, Chairperson Laurence L. Laurent

ABSENT: None

In the matter of **RESOLUTION NO. 96-485:**

This being the time set for consideration of a resolution establishing criteria for Board recognized advisory councils. Supervisor Laurent addresses the letters that have been sent to the Board. Mr. Robert Hendrix, Administrative Officer, explains the item. Supervisor Laurent states the Board wrestled with this resolution; not designed to cut off any input from the public; purpose is to establish consistency. Mr. Pat Mackie addresses democracy; feels by adopting the resolution the Board will restrict public input; public feels participation is removed; questions the logic. Mr. Eric Greening questions the objective. Ms. Peggy Wilson concurs with both Mr. Mackie and Mr. Greening; discusses how the resolution reads; urges the Board to reject the resolution. Mr. Cliff Smith, North Coast Advisory Committee (NCAC), states the NCAC has not had enough time to meet and create a consensus; resolution is not well thought out; questions the Board's vision; believes there is a need for more public involvement. Mr. Bob Roos, Templeton Area Advisory Group (TAAG), believes this is an unnecessary resolution; states community groups are all different; questions what problem the Board is trying to resolve. Ms. Kat McConnell, NCAC, applauds this endeavor; people need to attend their local meetings; feels this is in the best interest of the County. Ms. Jo Ellen Butler states her experience is only with the NCAC; believes the County allows people to express their thoughts. Mr. Pat Veasart questions where the Sierra Club fits in; states his concerns for the language in the staff report regarding "inclusionary" and "exclusionary"; addresses citizens input. Mr. Bob McDonald states that Advisory Councils are very important to the community. Mr. Paul Reynolds, CSA 9 Advisory Board, questions noticing. Mr. Bill Allen states he is associated with the NCAC; feels elected advisory councils represent everyone in their community. Mr. Joe Kelly speaks regarding credible information; Salinas River Plan; uninformed public; suggests leaving the issue alone. Mr. Mike Phelan states that only the elected should have a voice. Supervisor Laurent explains the intent of the resolution; agrees to the removal of number 2; suggests changing number 5, the word "shall" to "should". Supervisor Ovitt addresses the hypocrisy; states he does not support this resolution due to the diversity

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issue; speaks regarding flexibility in advisory groups. Supervisor Blakely states it is critical to encourage people to participate; addresses the intent of the resolution. Supervisor Brackett states it is a sad day when the Board promotes a premise that a group brings more weight than an individual; advisory group meetings are to flush out issues; states she does not support the resolution believes it is to restrictive. Supervisor Laurent questions Mr. James Lindholm, County Counsel, regarding amending the resolution and being in line with the Brown Act. A motion by Supervisor Delany to approve the resolution by amending it as follows: 1) deleting the second sentence in No. 2., 2) in No. 3 - is amended to read : " Advisory council meetings should occur regularly and be publicly noticed in a timely manner, and open to all members of the public.", 3) No. 5 the word "shall" to be changed to "should", and, 4) delete No. 6, is discussed. Mr. Lindholm responds to a question asked earlier by Supervisor Laurent. Matter is fully discussed and thereafter, on motion of Supervisor Delany, seconded by Supervisor Blakely and on the following roll call vote, to wit:

AYES: Supervisors Delany, Blakely, Chairperson Laurent

NOES: Supervisors Ovitt, Brackett

ABSENT:None

the Board amends the resolution as follows: 1) deletes the second sentence in No. 2.; 2) No. 3 is amended to read: "Advisory council meetings should occur regularly and be publicly noticed in a timely manner, and open to all members of the public."; 3) No. 5 the word "shall" is changed to "should"; 4) No. 6 is deleted and, **RESOLUTION NO. 96-485**, resolution establishing criteria for Board-Recognized Community Advisory Councils, adopted as amended.

cc: Board of Supervisors
12/26/96 vms

STATE OF CALIFORNIA)
) ss.
County of San Luis Obispo)

I, JULIE L. RODEWALD, County Clerk and ex-officio Clerk of the Board of Supervisors, in and for the County of San Luis Obispo, State of California, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of the said Board of Supervisors, affixed this 26th day of December, 1996.

(SEAL)

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk of the Board of Supervisors

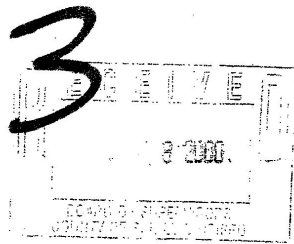
By Vicki M. Shelby
Deputy Clerk

Appendix D

Office of County Counsel

Defense and Indemnity for Advisory Group Members

COUNTY OF SAN LUIS OBISPO
OFFICE MEMORANDUM



TO: SUPERVISOR "KATCHO" ACHADJIAN
Board of Supervisors

DATE: November 27, 2000

FROM: Office of County Counsel

EACH SUPER
ADMIN CO

SUBJECT: Defense and Indemnity for Advisory Group Members

ISSUE

County Counsel Jim Lindholm asked that I respond to your questions concerning the County's defense and indemnification of members of advisory groups who assist the County in formulation of various policies, in particular, on land use issues.

CONCLUSION

The County of San Luis Obispo will defend and indemnify advisory committee members who are subject to claims or litigation as a result of the participation of those members in the activity of the committee as long as they are not acting with fraud, corruption or malice.

DISCUSSION

Advisory groups in San Luis Obispo County are private associations which have undertaken the study of various land use projects and policies for the sole purpose of giving input to official County boards and commissions, such as the Planning Commission and Board of Supervisors. Such groups have assisted in all supervisorial districts by letting appointed and elected officials gain an understanding of each community's concerns. The valuable nature of the work of these groups has been formally recognized by the Board of Supervisors as recently as your last Board meeting.

The County has had a long-standing policy of treating County volunteers as employees for purposes of providing defense and indemnification from claims and lawsuits. The County has

Supervisor "Katcho" Achadjian
Re: Defense and Indemnity for Advisory Group Members
November 27, 2000


adhered to the Tort Claims Act by treating volunteers in the same fashion it does employees, by recognizing that a volunteer acting within the scope of their duties performed on behalf of the County would be entitled to defense and indemnity provided their actions have not been taken because of fraud, corruption, or malice. This means that for claims arising out of advisory decisions taken by a recognized community advisory group, and for activity directly related to those decisions, the County would be responsible for defending individual advisory board members who are the subject of claims or litigation. With regard to the provision that an advisory board member not act with fraud, corruption, or malice, this generally requires that advisory committee member avoid making recommendations on the basis of personal animosity or bias against a project proponent or opponent.

We have discussed this letter with County Risk Management, and Mr. Giumini has concurred with our advice.

Thank you for bringing this important issue to our attention.

Very truly yours,

JAMES B. LINDHOLM, JR.
County Counsel


By: Jac A. Crawford
Assistant County Counsel

JAC:ep:mja
cc: Art Giumini, Risk Management
David Edge, County Administrator
Supervisor Shirley Bianchi
Supervisor Harry Ovitt
Supervisor Peg Pinard
Supervisor Mike Ryan
PBS 1095epitr.wpd